

Ethics Consultation

Beyond the Basics



U.S. Department of Veterans Affairs

Veterans Health Administration
National Center for Ethics in Health Care

Module 4/5

Generating, Translating and
Strengthening Ethical Arguments
and Counterarguments

Learning Objectives

- Identify ethical arguments and counterarguments and describe the role they play in an ethical analysis.
- Categorize ethical arguments according to 3 types of rationales: based on credos, consequences, and comparisons.
- Strengthen ethical arguments by adding supporting information to ensure the rationale is credible.
- Identify arguments based on faulty reasoning.

CASES Link



***SYNTHESIZE* the Information**

Determine whether a formal meeting is needed

Engage in ethical analysis

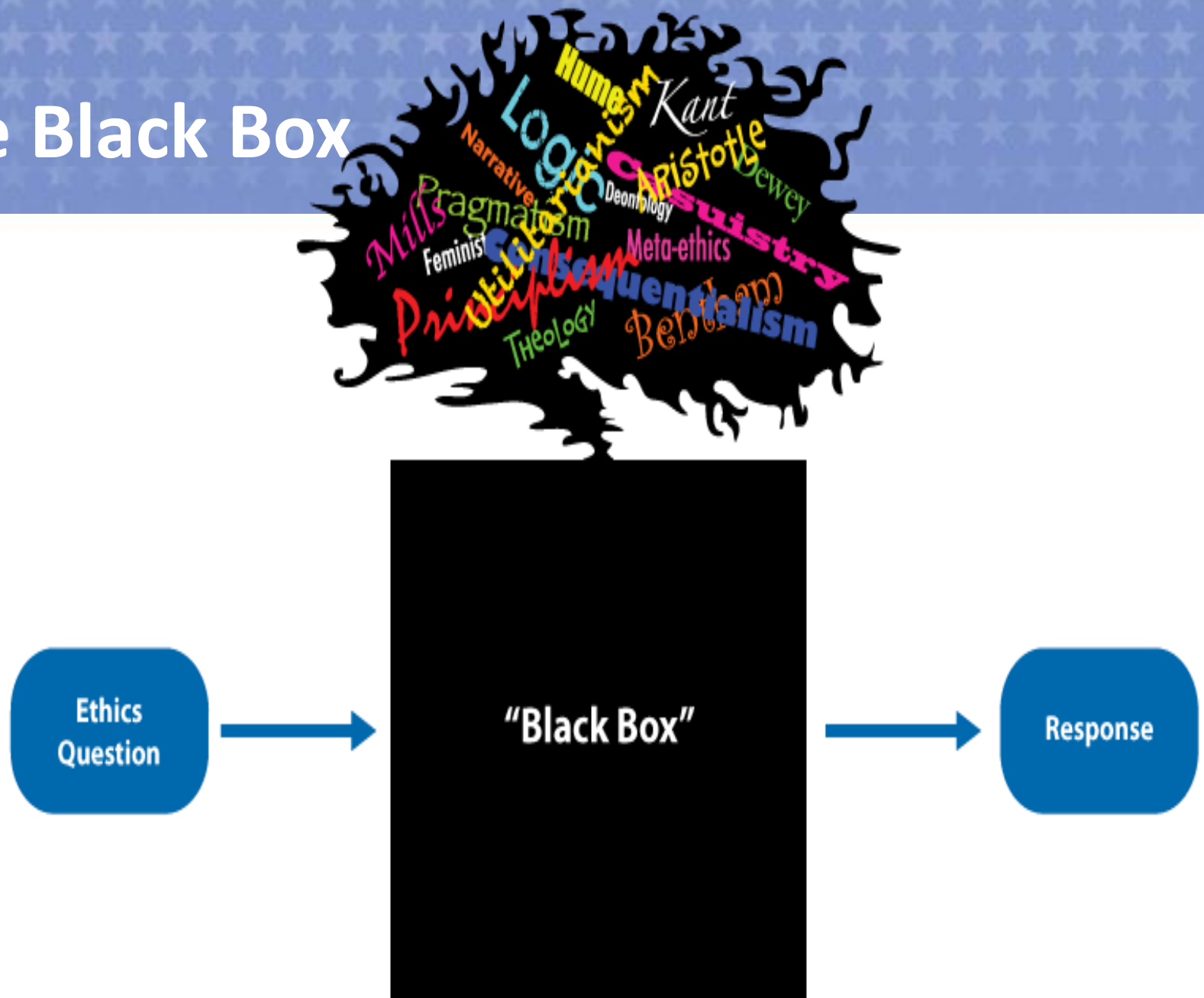
Identify the ethically appropriate decision maker

Facilitate moral deliberation among ethically justifiable options

CASES Approach

- Synthesize the Information
 - Determine whether a formal meeting is necessary
 - Engage in ethical analysis
 - Apply ethics knowledge to the assembled information
 - Generate and strengthen ethical arguments / counterarguments
 - Identify the ethically appropriate decision maker
 - Facilitate moral deliberation among ethically justifiable options

The Black Box



Ethical Analysis: Definition

The use of systematic methods of reasoning to apply relevant ethics knowledge to consultation-specific information for the purpose of responding to an ethics question.

Ethical Analysis: Steps

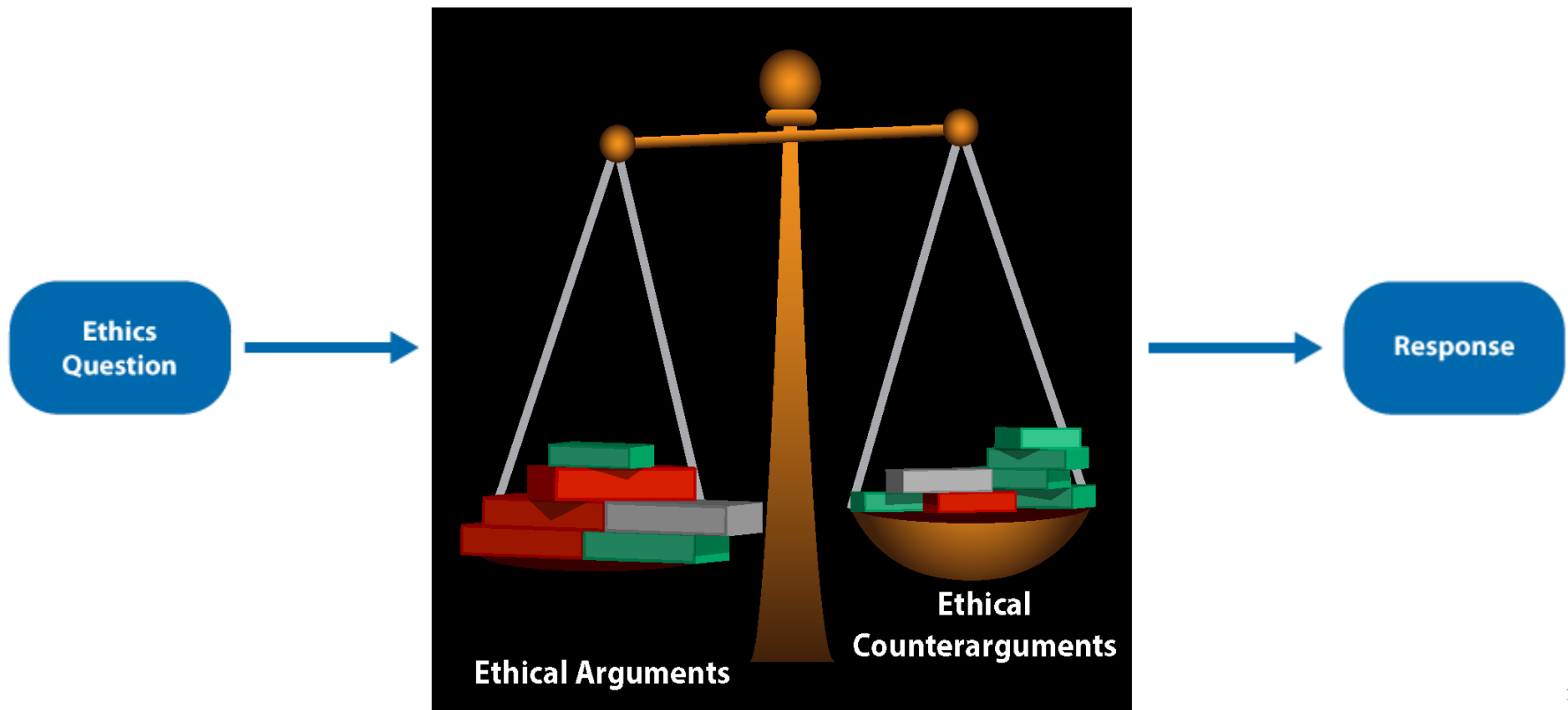
1. Articulate important ethical arguments and counterarguments in a clear and compelling fashion.
2. Weigh the strength of each argument and balance competing arguments to yield a conclusion that responds to the ethics question.

Ethical Analysis: Steps

1. Articulate important ethical arguments and counterarguments in a clear and compelling fashion.
 - A. Generating ethical arguments and counterarguments
 - B. Strengthening ethical arguments
2. Weigh the strength of each argument and balance competing arguments to yield a conclusion that responds to the ethics question.

Ethical Analysis

ETHICAL ANALYSIS



What is an Argument?

Definition of an Argument

A set of claims that includes a conclusion and at least one rationale to justify the conclusion.

Definition of a Claim

Assertion or declarative statement.

Example of an Argument

This patient is at high risk of suicide because he has attempted suicide multiple times before.

What Is a Claim?

Definition

An assertion or declarative statement.

Descriptive Claim

A statement about how something *is*.

Normative Claim

A statement about how something *should be*.

Example of Descriptive Claim

Most patients have never discussed their life-sustaining treatment preferences with their surrogates.

Example of Normative Claim

Surrogates should make life-sustaining treatment decisions based on their knowledge of patients' preferences.

Descriptive vs. Normative Claims

Descriptive Claim	Normative Claim
What is	What should be
Facts	Value Judgments
True or False	Better or Worse
Reality	Ideal World
Informational	Evaluative
Descriptive	Prescriptive
Verifiable	Justifiable
May be proven or disproven by empirical evidence or observations of the world	Cannot be proven or disproven by empirical evidence or observations of the world

What Is an Ethical Argument?

Ethical Argument

An argument that a particular decision or action is (or is not) ethically justifiable.

Example of an Ethical Argument

It would be wrong to write a DNR order on this comatose patient without involving the surrogate because the surrogate has a right to decide whether or not this patient should be DNR.

Identify Then Translate Ethical Arguments

Definition of an Ethical Argument

An argument that a particular decision or action is (or is not) ethically justifiable.

Standardized Format for Ethical Arguments

[Decision or action] is (or is not) ethically justifiable because [rationale].

Example of an Ethical Argument

It is ethically appropriate to write a DNR order on this comatose patient without involving the surrogate since the patient previously indicated that he wanted to be DNR.

Ethical Argument Translated Into the Standardized Format

[Writing a DNR order on this comatose patient without involving the surrogate] is ethically justifiable because [the patient previously indicated he wanted to be DNR.]

Translating Ethical Arguments into a Standardized Format

1. Express decision or action as gerund (“i-n-g”).
Example: “Writing a DNR order on this comatose patient without involving the surrogate.”
2. Determine whether argument is asserting decision or action is (or is not) ethically justifiable.
Examples: “Should/should not,” “ought/ought not,” “right/wrong,” “appropriate/inappropriate,” “proper/improper,” “good/bad,” value laden terms (e.g., murder).
3. Identify rationale for argument.
Examples: Preceded by “because,” “due to,” “for the reason that,” “since,” “for,” “inasmuch as,” “in the view of the fact that.”

Identify Then Translate Ethical Arguments

Example of an Ethical Argument

The right thing to do is to involve the surrogate before writing a DNR order in that failure to involve her will undermine trust.

Standardized Format for Ethical Arguments

[Decision or action] is (or is not) ethically justifiable because [rationale].

Ethical Argument Translated Into Standardized Format

[Involving the surrogate before writing a DNR order] is ethically justifiable because [failure to involve her will undermine trust].

Identify Then Translate Ethical Arguments

It is better not to tell the patient that his wife has died.
It would only make his condition worse.

Telling the patient that his wife has died is not ethically justifiable because it would only make his condition worse.

Identify Then Translate Ethical Arguments

It's the patient's right to know so you shouldn't withhold the information.

Withholding the information is not ethically justifiable because it's the patient's right to know.

Identify Then Translate Ethical Arguments

Patients often split their pills in an attempt to save money.

Can't translate = Not an ethical argument

Identify Then Translate Ethical Arguments

Surrogates should make life-sustaining treatment decisions based on their knowledge of patients' preferences.

Can't translate = Not an ethical argument

Ethical Counterarguments

Definition of an Ethical Counterargument

An ethical argument that opposes another ethical argument.

Example of an Ethical Argument

It would be wrong to write a DNR order on this comatose patient without involving the surrogate because the surrogate has a right to decide whether or not this patient should be DNR.

Example of an Ethical Counterargument

It is ethically appropriate to write a DNR order on this comatose patient without involving the surrogate since the patient previously indicated that he wanted to be DNR.

Ethical Argument and Counterargument

Example of an Ethical Argument

It would be wrong to write a DNR order on this comatose patient without involving the surrogate because the surrogate has a right to decide whether or not this patient should be DNR.

Example of an Ethical Counterargument

It is ethically appropriate to write a DNR order on this comatose patient without involving the surrogate since the patient previously indicated that he wanted to be DNR.

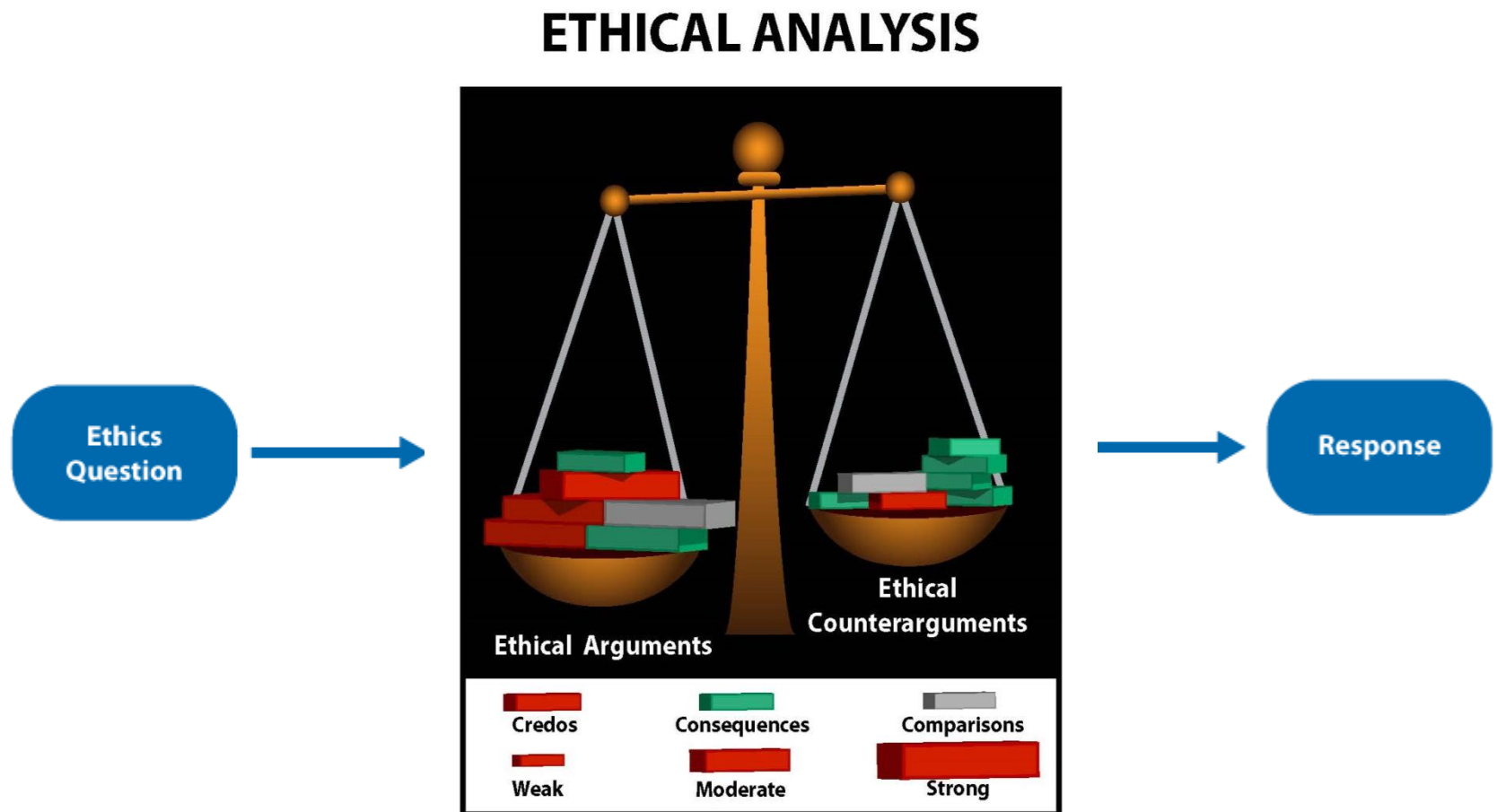
Argument or Counterargument?

The right thing to do is to involve the surrogate before writing a DNR order on this comatose patient in that failure to involve her will undermine trust.

Group Activity Instructions

1. Work in pairs.
2. Read the examples on Handout 4/5.3.
3. Determine whether they are ethical arguments or not. Hint: Translate the examples into the standardized format in your mind.
4. Label them “Yes” or “No” in the column.

Ethical Analysis



Example

Your health care system is trying to prevent the transmission of flu from health care workers to patients. Should the health care system mandate an annual seasonal flu vaccination for all health care workers?

Which Rationale Would You Choose for the Ethical Argument?

Mandating flu vaccination for health care workers is ethically justifiable because...

1. Health care workers have a duty not to harm patients by exposing them to flu.
2. The vaccine is safe for most staff to take.
3. Our hospital is similar to others that require flu vaccination for health care workers.

Which Rationale Would You Choose for the Counterargument?

Mandating flu vaccination for health care workers is not ethically justifiable because...

1. Staff have a right to make choices about their own health care decisions.
2. The vaccine is often not fully effective.
3. Other beneficial vaccines are not required.

Three Categories of Ethical Arguments

Mandating flu vaccination for health care workers is ethically justifiable because...

1. Health care workers have a duty not to harm patients by exposing them to flu.

[Argument based on CREDO]

2. The vaccine is safe for most staff to take.

[Argument based on CONSEQUENCE]

3. Our hospital is similar to others that require flu vaccination for health care workers.

[Argument based on COMPARISON]

Three Categories of Ethical Arguments

Mandating flu vaccination for health care workers is not ethically justifiable because...

1. Staff have a right to make choices about their own health care decisions.

[Argument based on CREDO]

2. The vaccine is often not fully effective.

[Argument based on CONSEQUENCE]

3. Other beneficial vaccines are not required.

[Argument based on COMPARISON]

Ethical Arguments Based on Credos

Definition of an Ethical Argument Based on a Credo

An ethical argument with a rationale to the effect that the decision or action in question is consistent or inconsistent with a credo.

Definition of a Credo

A statement intended to guide the ethical behavior of an individual or group over time.

Types of Credos

- Legal standards
- Policy standards
- Professional standards
- Religious standards
- Principles
- Organizational values statements
- Mottos
- Personal credos

Ethical Theories

Deontological ethics, “rule-based” ethics, duty-based ethics

Catchwords

Right, obligation, duty, responsibility, standard, legal, policy, ethical standard, principle

Ethical Arguments Based on Credos

It would be wrong to give John a bigger salary increase than Mary. It wouldn't be fair.

Giving John a bigger salary increase than Mary is not ethically justifiable because it wouldn't be fair.

Ethical Arguments Based on Credos

The organization owes it to her to give her another chance—it's the right thing to do.

Giving her another chance is ethically justifiable because the organization owes it to her.

Ethical Arguments Based on Credos

It would be ethically problematic if you made that phone call because you would be using your public office for private gain which is improper.

Making that phone call is not ethically justifiable because you would be using your public office for private gain which is improper.

Strengthening Ethical Arguments Based on Credos

Definition of an Ethical Argument Based on a Credo

An ethical argument with a rationale to the effect that the decision or action in question is consistent or inconsistent with a credo, i.e., a statement intended to guide the ethical behavior of an individual or group over time.

Strengthen by adding supporting information to explain why you think that the **credo** is true (ideally direct quotes from authoritative sources).

Requires: Knowledge of credos and sources of credos.

Strengthening an Argument Based on a Credo

Ethical Argument: Mandating flu vaccination for health care workers is ethically justifiable because health care workers should put the safety of patients ahead of their own concerns.

Ethical Argument with Strengthened Rationale: Mandating flu vaccination for health care workers is ethically justifiable because it is consistent with the professional duty to patients as codified in the AMA Code of Ethics, Principle VIII, “A physician shall, while caring for a patient, regard responsibility to the patient as paramount.”

Ethical Arguments Based on Consequences

Definition of an Ethical Argument Based on a Consequence

An ethical argument with a rationale to the effect that the decision or action in question will or will not result in certain good and/or bad effects.

Can Describe Consequences for

- Patients
- Families
- Health care teams
- Health care organizations
- Society in general

Ethical Theories

Teleological ethics, consequentialism, utilitarianism

Catchwords

Effect, result, cause, and if/then statements

Ethical Arguments Based on Consequences

We should not let Mr. Jones have an MRI on his first visit for back pain because if we do, everyone else would want one too.

Letting Mr. Jones have an MRI on his first visit for back pain is not ethically justifiable because if we do everyone else would want one too.

Ethical Arguments Based on Consequences

That level of budget cuts would compromise patient care and therefore is completely unacceptable.

Making that level of budget cuts is not ethically justifiable because it would compromise patient care.

Strengthening Ethical Arguments Based on Consequences

Definition of an Ethical Argument Based on a Consequence

An ethical argument with a rationale to the effect that the decision or action in question will or will not result in certain good and/or bad effects.

Strengthen by adding supporting information to explain why you think that the consequence will result from the decision or action in question (ideally empirical data or other clear reasons).

Strengthening an Argument Based on a Consequence

Ethical Argument: Mandating flu vaccination for health care workers is not ethically justifiable because the vaccine is often not fully effective.

Ethical Argument with Strengthened Rationale: Mandating flu vaccination for health care workers is not ethically justifiable because the vaccine effectiveness varies (historically between 10 and 60%) and it will reduce the program's credibility if many staff develop the flu despite the mandate to get vaccinated.

Ethical Arguments Based on Comparisons

Definition of an Ethical Argument Based on a Comparison

An ethical argument with a rationale to the effect that the decision or action in question is similar to or different from another decision or action.

Can Compare/Distinguish

- Characteristics of the decision or action
- Moral actor(s), i.e., who is making a decision or taking an action
- Recipients or object of the decision or action
- Circumstances surrounding the decision or action

Ethical Theories

Casuistry, case-based reasoning

Catchwords

Like, similar, as if, unlike, dissimilar, different

Ethical Arguments Based on Comparisons

Similar to the Cruzan case, even though there's no advance directive we should remove the feeding tube because it's clear the patient didn't want to be kept alive through artificial means.

Removing the feeding tube is ethically justifiable because, similar to the Cruzan case, even though there is no advance directive it's clear the patient didn't want to be kept alive through artificial means.

Ethical Arguments Based on Comparisons

It's okay for employees to use their work computers on occasion for personal matters, but this is different in that the employee was being paid for her time by another organization.

Using a work computer for personal matters in this instance is not ethically justifiable because this is different from other occasional uses in that the employee was being paid for her time by another organization.

Strengthening Arguments Based on Comparisons

Definition of an Ethical Argument Based on a Consequence

An ethical argument with a rationale to the effect that the decision or action in question is similar to or different from another decision or action.

Strengthen by adding supporting information to explain the **other decision or action** and why you think it is similar to or different from the decision or action in question, citing sources.

Strengthening an Argument Based on a Comparison

Ethical Argument: Mandating flu vaccination for health care workers is ethically justifiable because our hospital is similar to others that require flu vaccination for health care workers.

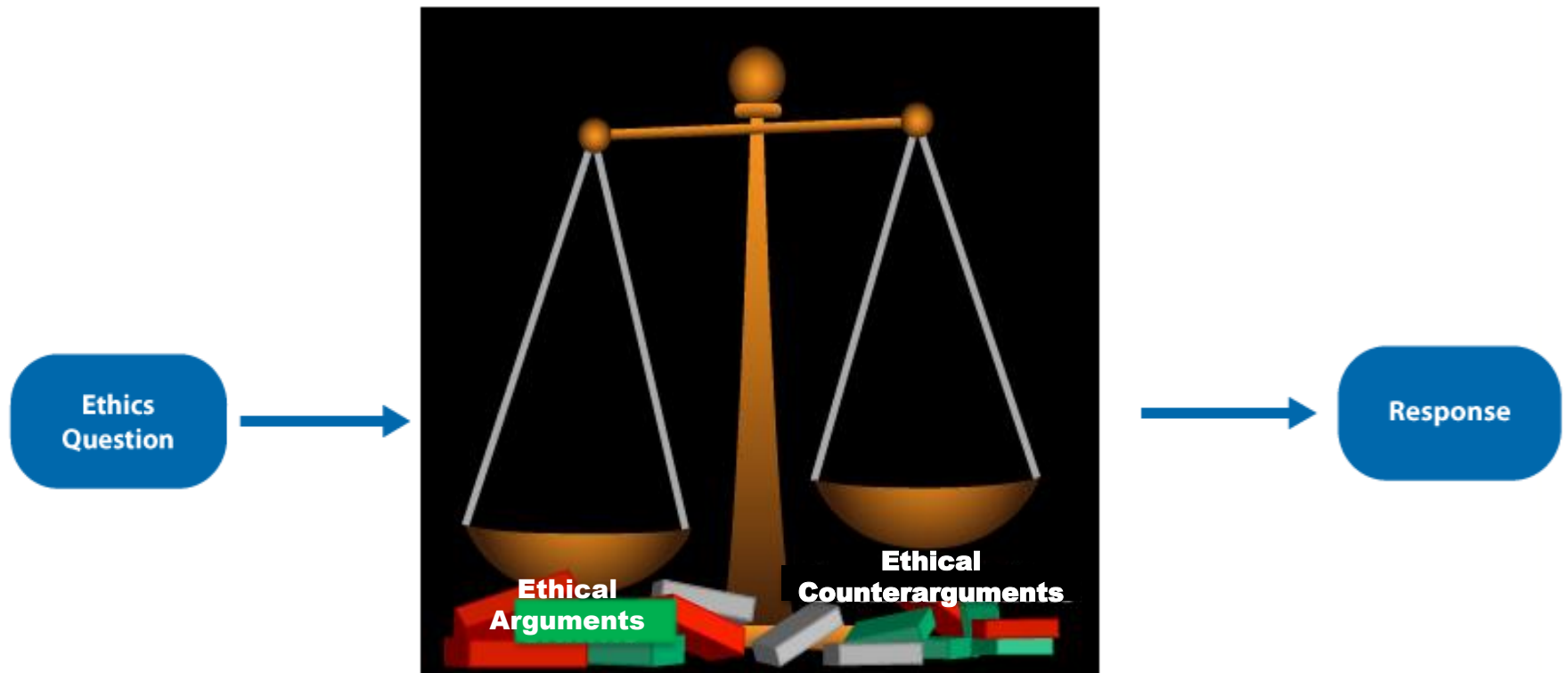
Ethical Argument with Strengthened Rationale: Mandating flu vaccination for health care workers is ethically justifiable because our hospital is similar to other leading teaching institutions and as of 2015 more than a third of The Council of Teaching Hospitals members have implemented strict vaccination policies.

How to Assess an Argument

- Identify the conclusion
- Identify the rationale
 - The reasons for believing the conclusion
 - Is the rationale true?
- Is the movement from rationale to conclusion logical?
 - Is the rationale relevant to the conclusion?
 - Do the rationales strongly support the conclusion?
- Are there counterarguments?
- Identify unstated rationales or assumptions

Ethical Arguments Based on Faulty Reasoning

ETHICAL ANALYSIS



Ethical Arguments Based on Faulty Reasoning

Almost all of the clinicians on the unit think we should override the surrogate's decision, so that's what we should do.

Ad populum

Ethical Arguments Based on Faulty Reasoning

The chief of staff doesn't disclose this type of medical error, so there's no reason to tell the family.

Inappropriate appeal to authority

Ethical Arguments Based on Faulty Reasoning

You should eat everything on your plate. Some children aren't lucky enough to get nutritious food every day.

Appeal to emotion

Ethical Arguments Based on Faulty Reasoning

We have to cut spending on social programs. Otherwise we will have a huge deficit that will bankrupt the country.

False dichotomy

Ethical Arguments Based on Faulty Reasoning

People who object to requiring a photo ID must be un-American.

Ad hominem

Ethical Arguments Based on Faulty Reasoning

It's legally permissible, so it must be ethical.

Confusing law and ethics

Group Activity Instructions

1. Work in pairs.
2. Match the arguments with their category:
 - Credos
 - Consequences
 - Comparisons
3. Identify claims based on faulty reasoning.

Group Activity Instructions

1. Work in pairs.
2. Fill in the worksheet with your partner.
 - Read the case summary
 - Generate and strengthen 1 argument and 1 counterargument for each of the 3 types of rationales for ethical arguments: credos, consequences, and comparisons.
 - Don't spend too much time on any one argument. The idea here is to think of multiple arguments.

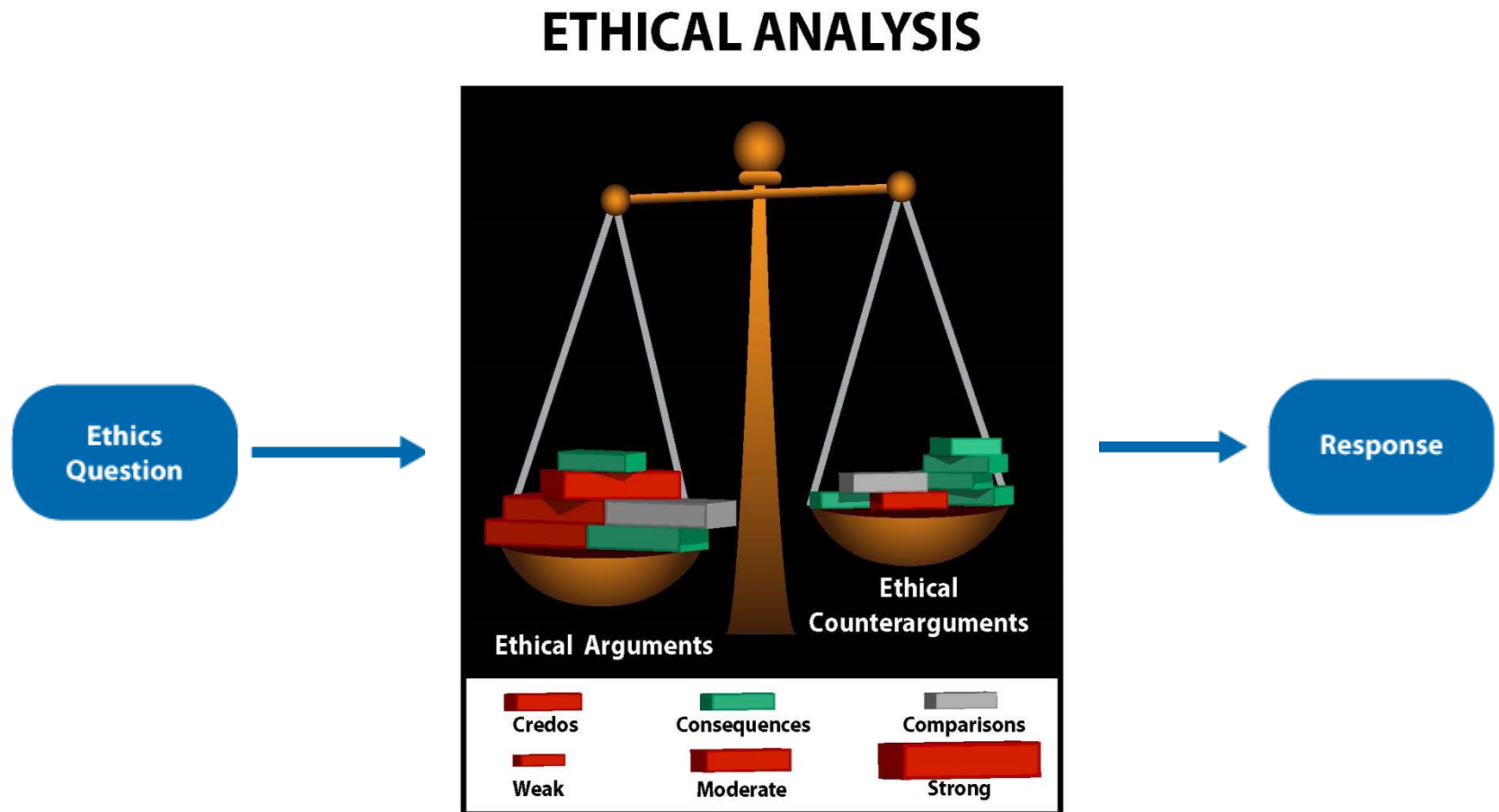
Takeaways-Generating Strong Ethical Arguments and Counterarguments

- Ethical argument: A statement that helps to answer an ethics question by asserting that a particular decision or action is (or is not) ethically justifiable on the basis of a specific rationale.
- 3 rationales for arguments: Based on credos, consequences, comparisons.
- Standardized format for ethical arguments:
[Decision or action] is (or is not) ethically justifiable because [rationale].
- Ethical argument should be strengthened so the intended meaning is understandable, not open to interpretation, and the rationale is well supported and credible.

Ethical Analysis: Next Steps

- Determine the relative strength of each of the arguments and eliminate those that cannot be made clear or compelling.
- Weigh and balance remaining arguments and counterarguments to determine what decisions or actions are ethically justifiable.
- Write the analysis, including arguments and counterarguments, in a logical sequence and coherent narrative.

Weighing and Balancing Ethical Arguments



Questions

Questions?